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THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by Friends World Committee for Consultation (Quakers), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[10 December 1996]

1. Friends World Committee for Consultation (Quakers), which represents Quakers from around the world, warmly welcomes resolution 1995/83, adopted without a vote, which drew attention to the right of conscientious objection to military service, including for those already performing military service, and set out the basis for alternative service in those States where there is compulsory military service.

2. For more than 300 years, Quakers have refused to participate in war, believing it is wrong to kill or to train people to kill. This is a conviction held by many people of different religious faiths and beliefs. It is on these grounds that Quakers claim the right to conscientious objection to military service, not only for themselves but for all who share their pacifist beliefs.

3. We commend those States which, since 1995, have recognized the right of conscientious objection to military service and provided for alternative civilian service in their national law and practice.

4. Although the list of countries having or considering legislation on this subject continues to grow, there are still too many countries where conscientious objection to military service is not recognized or where the alternative service does not meet the conditions laid down in resolution 1995/83. We urge States which have not yet done so to implement resolution 1995/83 in full.

5. In the working group of the Commission on Human Rights drafting an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, agreement has been reached on a minimum age of 18 years for conscription (compulsory recruitment) into government armed forces (see E/CN.4/1996/102). The Commission should reflect this minimum age for conscription in its resolution on conscientious objection to military service.

6. Friends World Committee for Consultation requests the Commission on Human Rights to consider how best to encourage and assist States to provide in their national law and practice for conscientious objection to military service and alternative service in accordance with resolution 1995/83, for example by such means as the provision of technical assistance by the Centre for Human Rights and the holding of regional workshops on how to incorporate provision for conscientious objection to military service in recruitment laws and practices.

7. Friends World Committee for Consultation also wishes to draw attention to certain specific problem areas which merit further study, such as conscientious objectors being tried for military offences, and those who have served prison terms for their refusal to perform military service being called up again on their release.

8. Furthermore, many recruits who seek recognition as conscientious objectors to military service are subjected to abusive procedures. However, during our work on this and related issues, we have become increasingly concerned more generally about the inhuman and degrading treatment to which many recruits are subjected. Such treatment starts with initiation rites ("baptism", "hazing") involving beatings, humiliation, being treated as servants, and other activities designed to minimize the self-esteem and break the character of recruits. The degree of violence and degradation involved not infrequently leads to death (including suicide), disablement or permanent physical, mental and emotional damage. That such treatment is allowed to happen, or is systematically practised, in a State institution raises questions about human rights and governmental responsibility. It also raises questions about the subsequent behaviour of the recruits as soldiers. This is not a problem confined to any one region or type of armed forces. We believe that the time has come for a study of the treatment of recruits (whether conscripts or volunteers) and its compatibility with international human rights standards.

9. In addition, Friends World Committee for Consultation continues to be concerned about the number of young people who flee their country of origin because there is no, or no adequate, provision for conscientious objection to

military service; or because they refuse to participate in internationally condemned wars or to serve in armed forces which are being used to commit genocide, war crimes or gross violations of human rights.

10. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR, Geneva, 1979) states, inter alia, "Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition" (para. 167). However, it goes on to state that "the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience" (para. 170). Furthermore, the Handbook indicates that where "the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft evasion, could ... in itself be regarded as persecution" (para. 171). In enunciating this principle, the Handbook took account of General Assembly resolution 33/165, which recognized the legitimacy of refusal to serve in military or police forces used to enforce apartheid and the need for asylum for those compelled to leave their country of origin for such refusal.

11. In accordance with this principle, and recognizing the increasing insistence on the accountability of the individual under international law and the duty of States to respect and to ensure respect for international humanitarian law (see common article 1 of the 1949 Geneva Conventions and of Additional Protocol I of 1977; article 38 (1) of the Convention on the Rights of the Child), States should grant asylum (at least until the individual can return in safety without fear of prosecution, further military call-up, persecution or other harassment) to persons compelled to leave their country of origin, either because there is no, or no adequate, provision for conscientious objection to military service, or because the armed forces are participating in an internationally condemned armed conflict or are being used to commit genocide, war crimes or gross violations of human rights.

12. Friends World Committee for Consultation therefore requests the Commission on Human Rights to:

(a) Urge States which have not yet done so, to recognize the right of conscientious objection to military service in their national law and practice and to provide for alternative service in accordance with resolution 1995/83;

(b) Endorse the minimum age of 18 years for conscription (compulsory military service);

(c) Offer the technical assistance of the Centre for Human Rights to Governments to implement resolution 1995/83 in their national law and practice;

(d) Welcome the holding of regional workshops and other activities to encourage and assist in the full implementation of resolution 1995/83;

(e) Request the Secretary-General to undertake an analytical report on the questions of conscientious objectors being tried for military offences, and of persons who have served prison terms for their refusal to perform military service being called up again on their release;

(f) Request the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a study of the treatment of recruits (both conscripts and volunteers) with a view to examining the compatibility of such treatment with international human rights standards; considering how the human rights of recruits can be better protected; and considering the consequences of inhuman and degrading treatment for the recruits and on the subsequent behaviour of the armed forces;

(g) Reaffirm that asylum should be granted to those compelled to leave their country of origin because there is no, or no adequate, provision for conscientious objection to military service or because the armed forces are participating in an internationally condemned armed conflict or are being used to commit genocide, war crimes or gross violations of human rights.